IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE UNOPPOSED VERIFIED)
PETITION OF THE UNITED STATES) Civil Action No. 1:07MC61
OF AMERICA TO PERPETUATE)
TESTIMONY)

Deposition of LUTHER MOLER, taken in the above-entitled case on October 30, 2007, at City Hall, 447 South Main Street, Hillsboro, Illinois, scheduled for the hour of 10:00 A.M., before Connie S. Golembeck, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, pursuant to the stipulation attached hereto.

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ALSO PRESENT:
Mr. Dion Novak, USEPA
Mr. Dean Bangor, T.L. Diamond

I_N_D_E_X

EXHIBITS	MARKED	ADMITTED
Government Exhibit Number 1	8	
Government Exhibit Number 2	41	
Government Exhibit Number 3	45	
Government Exhibit Number 4	71	

S_T_I_P_U_L_A_T_I_O_N

It is stipulated and agreed, by and between the parties hereto, through their attorneys, that the deposition of LUTHER MOLER may be taken before Connie S. Golembeck, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, upon oral interrogatories, on October 30, 2007, at the instance of the U.S. EPA, scheduled for 10:00 A.M., at 447 South Main, Hillsboro, Illinois.

That the oral interrogatories and the answers of the witness may be taken down by stenographic means by the reporter and afterwards transcribed.

That any requirement as to the reading over and signing of the deposition by the witness or the filing of the same are not expressly waived.

That all objections are hereby reserved except as to the form of question which is waived unless specifically noted.

That the deposition or any part thereof may be used for any purposes for which depositions are competent, by any of the parties hereto, without foundation proof.

That any of the parties hereto may be furnished copies of the deposition at his or her own expense.

MR. KRUEGER: If we can go on the record then.

Could you swear the witness, please.

(Witness was sworn by the reporter.)

LUTHER MOLER

called as a witness herein, having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KRUEGER:

Q Mr. Moler, I'm Tom Krueger and I'm an attorney with the U.S. EPA.

A Uh-huh.

Q We're here today in the -- the Government's Petition to Perpetuate your Testimony.

And before we get started, I just like to make sure you're aware any time you need a break, please let us know. We'll take as many breaks as you need, whenever you need them.

If I or any of the other attorneys here ask you a question and you don't understand it, please let us know and -- and we'll try to rephrase the question. We're not here to -- to try to confuse you in any way. Likewise, if -- if we don't understand your answers, we'll try to ask you questions to make sure that we can follow

up and understand it too. We just want to get your testimony down on the record.

And we again appreciate you comin' in today.

A Give it to you the best I can remember.

Q Thank you.

First, can you tell me, are you familiar with the zinc plant here in Hillsboro?

A Yes, I am.

Q And were you employed there?

A Yes, I was.

Q Do you recall the years of your employment there?

A Oh, approximately 46 years.

Q And do you recall when you started?

A 1957 or '58, I don't remember.

Q And are you familiar with the operations that -- that the owners of the zinc plant performed there?

A Yes, I am.

Q And how did you become familiar with those operations?

A Well, when I started out there I worked out in the plant, and then I went from the plant to lab technician. From a lab technician I went up to the main lab work, and from there I went to bein' a shift foreman.

From shift foreman I went to bein' a supervisor over the furnace and over the refineries. And then I become the plant superintendent.

Q And are you familiar with the processes that were used at the plant to manufacture products?

A Yes, I am.

Q And how did you become familiar with those?

A By working with them and doing them.

Q And are you familiar with the materials that were used at the plant?

A I'd say 99 percent of them.

Q All right. And how did you become familiar with them?

A By assay and by handlin' them and by tellin' people what to do with them.

Q And did you perform assays on the materials?

A Some of them I did.

Q And did you receive training with respect to operation of the equipment at the plant?

A Yes, I did.

Q Did you provide training with respect to operation of the equipment at the plant?

A In later years.

Q And would you regard yourself as an expert with

respect to operations at the zinc plant?
A No, I'm not an expert.
Q Okay. Do you believe you have knowledge --
substantial knowledge, with respect to those operations?
A Yes, I do.
Q Okay. Well, let's start with the time that
Eagle Picher was operating the plant. What was Eagle
Picher's business in Hillsboro?
A Making zinc oxide.
Q Did Eagle Picher make other materials when they
were present in Hillsboro?
A Not when I was there. They made two different
types of zinc oxide at the time.
Q And what was the nature of your employment when
you began at Eagle Picher?
A Yardman.
Q And what I'd like to do is -- I will hand you an
exhibit that I've marked as Government Exhibit 1.
(It should be noted that
Government Exhibit Number 1
was marked for identification
and furnished to the deponent
for review.)
MR. KRUEGER: And I'm sharing copies of it with

Counsel.

(It should be noted that copies of said exhibit were furnished to Counsel.)

MR. BURKE: Thanks.

MR. IX: Thank you.

MR. KRUEGER: Do you recognize that document, Mr. Moler?

THE DEPONENT: I recognize the plant, yes.

Q And do you recognize the structures that are shown on the -- on the map?

A Yes.

Q And is that a fair and accurate representation of the structures that are present at the plant?

MR. IX: I'm gonna object, and ask for a clarification. At what point in time?

MR. KRUEGER: All right, that's -- that's a fair clarification.

Is this a fair represent -- and accurate representation of the structures at the plant at the present time?

THE DEPONENT: That's there, and that's there. That's there.

(Short pause while said exhibit was reviewed by the deponent.)

THE DEPONENT: It seems to be.

Q I -- did the nature of the structures at the plant change from the time you first became employed at Eagle Picher to the present day?

A Well, basically, the structures didn't change. We added one which was down at the muffle furnace. We extended it out to house one more muffle furnace.

Q All right. And what I'd like to do if I could is -- drawing your attention to the building that's just north of the most northerly road on the map.

MR. McCONNELL: Tom, just for clarification -- may we just go off the record.

(An off the record discussion was held.)

MR. KRUEGER: All right, back on the record.

Mr. Moler, let me direct your attention to the northern most building on the plant property. Are you -- could you circle that building on -- on your copy of the exhibit?

(Which was so done.)

MR. KRUEGER: Are you familiar with what building

that is?

THE DEPONENT: Yes, I am.

Q And what building is that?

A We called it sublead. It was a building that we used strictly for storage of zinc oxide. We stored paper bags out there and we stored excess parts for rotary furnace, refineries and what have you.

Q Could I ask you to label that building on your copy of the map, please?

(Which was so done.)

Q And then I ask you to move to the south and the east on the map until you come to the next building; and, could you circle that building for me on the map?

(Which was so done.)

Q And could you identify that building for me, please?

A That is the muffle furnace building.

Q And is that the building that you referred to previously when you indicated Eagle Picher expanded it?

A Yes, it is.

Q And could you label that --

(Which was so done.)

Q It looks like you already are labeling that building on the map for me. Thank you.

And what functions did Eagle Picher perform in the muffle furnace building?

A That was where we made French process which is oxide made from metallics, zinc or -- like, carburetors, grills, what have you, et cetera.

Q And could you explain to me how a muffle furnace works?

A Well, you take and get it up to temperature of 2,400 to 3,000 degrees, depends on what you're makin'. And you have a furnace that is -- for people that don't know?

(It should be noted that deponent started sketching a diagram.)

A You have a furnace like that. And then over here you have a firing place where you take and -- you take charge scrap or material into this for a type of furnace and the zinc melts and goes over into this furnace over here, same furnace only part of it. From that part you come back here and you have a section where the -- the fumes come out into this, which we call a riser. And as the fumes hit that the air hits it and converts it to zinc oxide. The zinc oxide from that point would go over into a baghouse. And from the baghouse it would be brought up

to the refinery where we would -- normally, French process oxide, 90 percent of the time, 95 percent, we would pack it direct and sell it as that. But some part of it we used in other product.

Q And now could you tell me what -- what inputs would go into the muffle furnace?

A Well, zinc. Basically, zinc -- whether it be galvanized zinc, scrap zinc, high-grade zinc. That -- that was all that was put into the muffle furnace.

Q And then --

A Some drosses which is still zinc.

Q And were any products or by-products produced by the muffle furnace beyond the zinc oxide --

A Well, yeah.

Q -- use you have --

A You have muffle dross and iron and steel that come out of the carburetors, zinc and what have you. All that would become a -- a dross, we call it. Muffle dross.

Q And could you describe to me what muffle dross looked like?

A It was a gray zinc powder. It may have 5 percent, 6 percent zinc in it. Could be as high as 10 percent zinc in it. Depends on how well they strained it before they pulled it out of the furnace and everything.

Q And was this a loose material?
A It's, like, a powder or an ash. It -- some of it could be -- when it begin to cool it would be maybe the size of a -- of a dime maybe or somethin' like, you know, little bit will chunk but a lot of powder in it.
Q And what would Eagle Picher do with the muffle dross that was produced from the furnace?
A We would -- we would take and screen the -- across a trommel screen, dump it in there and the dross would come out under it and the metals and -- would come out on the ends. And the metals was sold to the junk dealer. They come up and got them. And the dross, why, they sold it. They screen it and take it to the field. When they didn't sell it then they'd pile it out there until they was able to sell it.
Q And do you recall where Eagle Picher would pile the metal dross that it produced?
A Well, they'd pile it here. And then we piled it out in this area out here. You got numbers out here, but I'll put it out over here. Normally, we pile it here and this is where we screen it and everything and then the finish we take out to the field and pile it.
Q And so that the two piles that you've indicated and -- and labeled on the map, the -- the one pile is

located to the west of the muffle furnace building --
A Right.
Q -- in relatively close proximity to it?
A Well, right by the railroad tracks. Because that's where -- we would take it out there and dump it. And when it cooled then we would take it and screen it right there and then haul it out to here.
Q And was any particular type of dross taken and hauled to the other area you've indicated near what's labeled as NP-15?
A No, the muffle dross mainly is what we put out there.
Q And I believe you --
A At the time that the furnace was runnin'.
Q And -- and I believe you indicated that the muffle furnace also produced iron material?
A Uh-huh.
Q And what would Eagle Picher do with that iron material?
A We -- we generally stacked it right over here, which would be in this area, and then they'd get a boxcar or gondola car in here and they'd load it out.
MR. McCONNELL: Tom, excuse me -- for the record, so we can -- I'm watching him draw this, but -- some

correlation on the map so we can follow this and when we read this later we'll figure it out.

THE DEPONENT: I'll go over it in a minute.

MR. McCONNELL: Off the record.

(An off the record discussion was held.)

MR. KRUEGER: Okay, we can go back on.

And, Mr. Moler, how many muffle furnaces did Eagle Picher operate?

THE DEPONENT: Normally, just two at a time.

Q How many muffle furnaces did Eagle Picher have?

A We had three at one time.

Q Were the processes different from furnace to furnace at the time Eagle Picher was there?

A No.

Q Then if we could move on, I'd like to direct your attention to a long structure indicated on there that runs from north to south that's off to the -- off to the --

A This one?

Q No. That's off to the east of the muffle furnace building.

A This long structure here?

Q Further to the east. On the --

A This one?
Q On to the west, I'm sorry --
A Okay.
Q -- I'm confusing myself.
A This long structure here?
Q Correct.
A All right.
Q Do you know what that structure is?
A Right now -- it was a structure that housed three rotary furnaces.
Q Could I ask you to circle that building and label it for me?
(Which was so done.)
Q And, Mr. Moler, I note that you have labeled it as rotary --
A Rotary one, rotary three and rotary four. That's the three rotary furnaces that was in the building.
Q And does that indicate that there's also a rotary two?
A Rotary two is over in -- over on the other side of the plant.
Q All right.
A Which would be approximately -- I would guess, it's right here.

Q All right, could I ask you to circle that building and label it as rotary two?

A Rotary two is here.

Q And so rotary two is --

A I'm guessin' that's it. Just --

Q All right.

A Looks like it from here.

Q Rotary two is a building that's on the eastern most edge of the plant?

A Right. Next to the road.

Q And now could you explain to me how a rotary furnace works?

A Well, a rotary furnace is -- is charged with anthracite coal and zinc products, they're mixed into a batch -- we call, feed. Feed is hauled over to a feed hopper at the rotary furnace. It's put up into the feed hopper. From the feed hopper it goes into a drum which runs at a high temperature to dissolve it and convert it into zinc oxide fumes. It goes into the furnace, and it's hot enough that it goes into what we call a discharge chamber at the end of the furnace which is a structure about -- it's in combination of discharge and combustion chamber, but it's about 30 foot long and -- and I don't know how tall it is, maybe 20 feet tall, and 10 or 15 feet

wide. Just -- that's approximate. It's -- it's just a brick structure. And the first eight foot of it or so is what they call a discharge chamber; and, fumes come out of the furnace and go up over this discharge chamber and there's air slots at the top of it where you can hit it with air in order to convert it to different types of oxide. And it goes into the combustion chamber and from the combustion chamber that's where the heavies fall out. The -- I -- I don't know what you want to call them, I -- I always call them just heavies. It's just an off-grade of oxide. And those from that point would go into a trail. And at the trail it's -- acts as a cooling agent, as they go through this cooling agent they convert into your zinc oxide -- actual zinc oxide. And from that it goes into this little building right here, little building right there and that's called a baghouse. That's number two baghouse.

Q And that's located due west of the number two --

A Due west --

Q -- furnace?

A -- of the number two furnace.

From the baghouse it goes into a -- a weightometer room which is this little short strip comin' off right there.

Q And that's just to the north of --
A Just to the north of the baghouse.
And it goes up an elevator over into the refinery into what we call the raw bins; okay? And -- and the raw bins, that's another process from that point on.
Q Okay. Now you had indicated that what you called the charge that went into that furnace consisted of anthracite coal and I believe you used the term zinc products. Could you explain to me what --
A Well --
Q -- zinc products would be?
A -- it could be zinc ore or a zinc dross of some -- high zinc dross. It's just a zinc -- we called them nodules. But it's just zinc that we -- we bought and -- the company bought and brought in there, and we mixed it with anthracite and that to put -- the anthracite was reducin' agent to get -- to get the zinc vapors burnt.
Q So was anything else fed into the rotary furnaces besides the anthracite coal and the zinc-bearing material?
A No.
Q Okay. And I -- let me backtrack for just a moment.
Now you'd indicated that the material from

rotary furnace number two fed into baghouse number two. Did the material from furnaces one, three and four feed into a different baghouse --

A Yes, it did.

Q -- area?

And could you indicate on the map where the baghouse servicing those furnaces would be located?

A Those would be in this long structure right here. This is called a baghouse.

Q And that's the long structure that runs north to south that's located just --

A Right north --

Q -- south of the muffle furnace?

A South of the muffle furnace, north of the refinery rebuilding. That section there.

Q And could I ask you to label that for me as well on your map?

(Which was so done.)

A I'm labelin' it baghouse, but it housed different types of baghouses.

Q And now you indicated that along the way the rotary furnace process would produce what you described as heavies?

A Uh-huh.

Q And what would Eagle Picher do with the heavies?
A We'd take it back to the mix room, mix it in with the charge and put it back through again.
Q So it was recirculated through --
A Right, it was recirculated product.
Q And in addition to the zinc oxide product did the rotary furnace generate any other products or by-products?
A Well, we generated -- what we call, a slag. It would be a buildup of zinc that would build up into the rotary kiln itself or into the discharge chamber.
Q And could you describe to me what that slag would look like?
A Well, it -- it was -- just air-hammered it out in chunks as best you could because it's a -- zinc-bearing, high in iron, and that's the only way you could get it out. You'd have to take an air-hammer in there and break it up and get it out of there. And some of it would be low-grade zinc and some of it would be high-grade zinc when you take it out of there. And we tried to keep the high-grade zinc as much as possible; and, we take it over to the crusher, crush it up and run it back through the furnace.
Q And could you indicate for me on the map where

that crusher was located?

A Well, it would be right over here. Right -- a little square building right south of RR2-11.

Q And that's located on the --

A Just the top half -- (pointing out location on map) --

MR. IX: Thank you.

MR. KRUEGER: It's located on the west side of the road?

THE DEPONENT: Right.

Q And would -- so if I understand you right, Eagle Picher employees would manually remove the slag from the sides of the kiln structure?

A I've done it.

Q And was this slag removed from the -- the furnace of a uniform size and consistency?

A Well, no, it -- it -- you got a round drum; okay? And it would stick to the drum, the iron and the zinc. And in places it would be thicker, in places it would be thinner. Just -- it just depends when we shut down. The biggest part would be at the bottom on account of that's where as it cooled it would settle. And at the top then it would be a little thinner.

Q And now you indicated that -- that this slag

cleanout material that had high zinc content would be crushed and reused in the process?

A In the rotary furnace process, yes.

Q How did you determine the zinc content of the material?

A Well, we would take and either -- break off a chunk and we grind it and then we'd assay it and it would tell us how much zinc was in it. And you could look at it sometimes and you could tell it was high zinc. I mean, it just had the color and everything. If it was real low zinc it would be kind of a grayish color. If it was high zinc you'd see a lot of green and -- and that in it. You know, it had different colors you could tell whether it was high in zinc or not. But then we still -- it was all assayed before we done anything about it.

Q And was the -- the -- the slag cleaned out of the kiln -- I'm sorry, what was done with the slag cleaned from the kiln that had lower zinc content?

A It was taken out to -- in this area and stored.

Q All right. And now when you say this area, you indicated an area that's where on the map?

A Be the south side. It's what you got listed here -- be RCO-5.

Q Okay. Could I ask you to circle the general

area where Eagle Picher would have placed the cleanout slag material?

(Which was so done.)

Q And so you've labeled that slag --

A Slag --

Q -- from --

A Rotary.

Q -- rotary. Thank you.

And while Eagle Picher was operating the rotary furnaces, did they generate -- did those furnaces generate other residues?

A Well, you had -- you -- you had a residue that come out of the north side of the rotary furnace into what we called a quench tank which was water. And that was just basically to cool it. And you would take it and when it was cooled then they'd haul it with a truck over to the mix room.

Q And now how was that -- how was that residue generated and where did that come from in the -- in the manufacturing process?

A It come from the furnace and it was generated mostly from your anthracite coal and that, as you run it through the furnace. Basically, that's what it is, was -- come out is -- is a coal, you know, that's what it looked

like even, black and --

Q And could you tell me again what -- what Eagle Picher would do with that rotary residue?

A Well, we take it over and screen it over at the mix room. And if we could use it back in the furnace we would use it, mix it back in with the coal. If we couldn't then it was stored over in the -- a rotary pile which would be -- oh, in the area of the CPH-9 and CPH-6, in that area there was a great big rotary pile of oxide. Which I'm gonna put it beside this, I'll call it rotary residue. Right in this area.

Q So you've drawn and labeled an area as you've indicated --

A Rotary --

Q -- that's in the vicinity of CPH-6 and CPH-9?

A Nine.

Q And --

A It's in that area, yeah.

Q And is -- is that the area -- did Eagle Picher consistently use that area to store the rotary residue?

A We did.

Q Now earlier you had indicated that -- the building housing rotary furnaces one, three and four.

A Uh-huh.

Q I believe you qualified saying, at that time.
A Well --
Q Was a previous use made of -- of that structure?
A It was what they call Wetherill furnace, it's a hand-fired furnace. And basically, they mixed anthracite or coal, whatever type they use with the ore, and you shoveled it in there by hand. It was one of the first furnaces before they modernized it.
Q And do you have experience using and operating the Wetherill furnace?
A I had a little bit of experience with it, but -- we shut it down shortly after I was there. But, yeah, I worked on it one time.
Q And what would the inputs be to the Wetherill furnaces?
A Just the same as the rotary, only it's -- it's shoveled in instead of -- put in there by -- by hand.
Q So that would be -- that -- that what you called the charge?
A Yeah, the charge.
Q And the charge would -- again was --
A It was mixed in the mix room and -- and put up into a hopper, and then from that you had charge cars that -- you fill the hopper, one hopper would go to -- one

charge car would go to one furnace. It was -- actually, in row -- let's say, in block -- in furnace where block four is right now, why, you'd -- say, maybe eight fires you shoveled into, eight different sections, and then you -- as one would burn out you -- you take and break it up and you'd -- and the other one would be burnin'. You didn't charge them all at the same time. You charged one and then one and then one. And you take and cleaned them out the same way.

Q Now what by-products did the Wetherill furnace produce?

A They come -- they brought a clinker off -- what they call a clinker, and that's -- basically, it's like your -- your residue only it's -- they call them clinkers, and you break them up with a bar and -- and then they just pulled them out and they had a chute at the end of the furnace that dropped them down into a hopper downstairs and they could haul it out into the field.

Q And could you describe what the clinker looked like?

A It was, like, a small gray -- I don't know, I'd say a mash because you break it up and it would be in chunks; but, then as -- as it's cool and everything it deteriorate and break into smaller particles and some

fines.

Q So parts of the Wetherill clinker would be smaller, finer --

A Right.

Q -- particles?

And do you recall where Eagle Picher placed the Wetherill clinker that it generated?

A Well, when I was here the -- just before the shutdown, they would -- right about in this area here; and, that would be between the tracks where you show -- sublead is and where I said the dross was on those tracks.

Q All right.

A Which would be right in that area; okay? And that's where they took it up there and stored it.

Q All right. Could I ask you also to label that area for me that you've drawn on the map?

(Which was so done.)

A I labeled it as hand furnace dross.

Q Okay. Thank you.

A You guys call it Wetherill, but I call it a hand furnace.

Q Do you know of any other areas where the -- the Wetherill or --

A No.

Q -- hand furnace was disposed --
A No, like I said, it didn't run long. They finally shut it down.
Q You'd indicated that there were four rotary furnaces. Did Eagle Picher operate those four furnaces in a -- in a consistent, uniform manner?
A No.
Q What were the differences between the way they operated the furnaces?
A Well, the block three was basically what we call an experimental furnace. We run it on different things to see, you know, if we can make one product or a different product on it. And maybe instead of usin' nodule zinc we'd use some dross zinc or somethin' like that. It was strictly experimental.
Block one rotary, it was strictly a zinc oxide producing rotary only it was smaller than block two, the one by the road. And they basically just quit usin' it 'cause the -- supply and demand, they didn't need it. Just one rotary.
Block four was a -- it's a lot bigger kiln and they brought it in -- they was gonna try to run it and it didn't work out. It just -- too long a kiln and we just -- it kept slaggin' up on it and everything. We just

didn't -- they just didn't run it that long.
Q Okay. And was the material generated as by-products or -- or waste out of rotary three placed in the same location as the other rotary residues that you've indicated?
A No.
MR. BURKE: Object to the form, use of the word waste as a product.
Go ahead.
MR. KRUEGER: I'll rephrase it.
During the time that Eagle Picher operated rotary unit number three, did the by-products generated from that furnace get placed in the same locations as the other rotary residue?
THE DEPONENT: No.
Q Where was the residue from rotary furnace number three located?
A They would be in this RR2-11?
Q And I'll just note for the record, that that notation is already on the map that was presented as Exhibit 1.
And, Mr. Moler, directing your attention to the structure located immediately south of the crushing area. Could you tell me what that structure is?

A Well, it ended up bein' just a wareroom; but, it used to be -- when Eagle run it, it was what we call a carbon recovery plant.

Q So Eagle Picher operated it as a carbon recovery plant?

A Uh-huh.

Q And could you tell me what the carbon recovery plant did?

A Well, they took the residue -- the screened residue, and we run it through a process that would separate the -- well, basically, the heavies and the -- and the coal. In other words, it come out -- on one end of it would come out -- would be zinc-bearing materials, which we could run back through the furnace as zinc; and, in the other end it come out at -- carbon, which we could use, mix in with our other anthracite coal and run it back through the furnace. It was a reclaiming process.

Q So were any by-products generated from the carbon recovery unit?

A There was what they call a hutch.

Q And could you describe for me what that hutch would look like?

A Oh, just -- it's a -- a gray granular product that basically was high in iron, for one thing.

Q And when you say was granular, were -- do you recall that those grains were small or large?

A No, they was small.

Q And do you recall where Eagle Picher would place the residue from the -- or, the carbon hutch?

A Well, it was the -- basically, be in -- I hate to mess your map up. But, it basically would be in this area here.

Q And so you're indicating an area that's in the general vicinity of the rotary residue --

A It just --

Q -- but off --

A Some of it was a little bit to the west of the rotary residue. Some of it was on the north and west of the rotary residue.

Q Okay. And could I ask you to -- to label that carbon hutch area for me as well?

(Which was so done.)

Q Thank you.

Now you've -- in the -- in the course of going through and -- and annotating the map you've indicated a number of areas where by-products were piled or accumulated at the plant during Eagle Picher's stay there.

A (Nods head yes.)

Q Are you aware of any other areas where by-products were piled or accumulated by Eagle Picher?

A Not in -- in my time. I know there was, but -- I mean, not in my time.

Q But did you observe other areas of the plant where by-product material was accumulated or piled?

A Yes. Back in this area back here, where you call RR1-2 and RR1-1.

Q And that material was present there at the time you began your --

A Yeah.

Q -- employment?

A Right.

Q And do you know what that material was?

A I -- I can't tell you. I don't -- honestly, don't know what -- what it was from.

Q Okay.

A I know what it looks like, but I don't know what it was from.

Q Could you describe for me what it looks like?

A Well, it looks like a rotary residue, is what it looks like -- or, basically -- but it's -- it's set there and hardened and chunked and everything else over the years.

Q And when you say it looked like rotary residue, again could you describe for me what physically it looked like?

A Well, just -- it just looked -- it just looked like a gray granular product out there that normally probably had fines in it to begin with or dust, but over the years it's just conglomerated and hardened and it's all together.

Q And now do you recall any other areas where by-product material had been stored or piled by Eagle Picher at the plant site?

A Not offhand, no.

Q All right. And now you indicated that these by-product materials would sometimes be reused in Eagle Picher's manufacturing process?

A Yes, I did.

Q Did you observe Eagle Picher employees disturbing those piles as part of the process of gathering materials to be reused?

A Well, yeah.

Q And would that cause the material in the -- in the accumulation areas to be spread around?

A To some extent it would, but not greatly.

Q Now you indicated that a number of these types

of residue materials had -- what you'd call, fines?
A Uh-huh.
Q Did you witness that fine material blowing off or around those piles?
A Well, see, these piles was put in there wet and they'd always -- the more you put on, they just stayed wet all the time. Now they would have a tendency to -- to slide and spread out a little bit. But as far as just, you know, dust blowin' off of them and everything, no, I -- I wouldn't say that I seen that. Not off your rotary residue.
Q Was that also -- would that also be true of the dross pile?
A Dross is a little bit different. It's dusty, it's dry. It's dry to begin with. You run it through a furnace at the high temperature and it is a dross, it's a powder of types.
Q And now would the -- would the furnace cleanout material also have been placed on the ground wet?
A The slag? No. No -- let me rephrase that. When we cleaned this out, most of it come out as chunks and was hauled away. But sometimes you get little particles that would fall -- in the discharge chamber, would fall out and they'd go out in the residue; but, they

would screen -- they would be wet, but they would still end up put over in -- put in the slag pile where the other slag was put.

Q And so would those fine materials be -- have the potential to be blown around the facility?

A No. You can't -- some of those slag chunks you couldn't pick up, no less blow away.

Q Now during the time Eagle Picher was operating there did you observe any materials washing off or down the residue piles?

A Well, any -- any time you dumped them, why, they would run off and the water would run and sometimes it would run down the face of the ground around it and that.

Q Okay.

A Because, like I said, you haul it in there wet to begin with. We took and loaded this material into a truck at the back of the residue where it come out of the quench tank and it's wet. So we would back our truck up to the ramp and take and put the residue in there and let the water run back down into the residue so -- 'cause it had a circulatin' pump that pumped all the time in there.

Q Okay.

A And so, you know, you got as much water out as you could but there was still water in it when you took it

to dump it.

Q Now you indicated that you -- you -- that Eagle Picher would assay these residue materials when they were produced?

A Uh-huh.

Q Are you familiar with the results of those assays?

A I've seen them, I run a few, but that's -- that's where you tell whether, you know, what you want to do with the residue.

Q Would the residue materials that Eagle Picher generated have produced lead?

A (Short pause) --

Q Or, I'm sorry, would they have included lead?

A Possibly, yes.

Q Would the residue materials that Eagle Picher generated have contained cadmium?

A Yeah.

Q And why do you say that?

A Because when they're assayed in there, to begin with we know what type of charge we're puttin' into the furnace. And they'd maybe have iron in them and not -- not so much cadmium in it, that you pick up your cadmium more out of your -- your metal process than you do -- did

out of your rotary process. But your -- if you'd asked me exactly what they was 20 years ago, I couldn't tell you how much cadmium was in it or zinc or iron or anything. We try to keep it as a high -- high level, you know, but then it had so much ash in it and -- which come from the coal, and you had your -- zincs had -- different nodules had different zinc values in them, you know.

Q Now would the residues that Eagle Picher generated have contained iron?

A Yes.

Q And how do you know that?

A From the assay and from air-hammerin' it out of the furnace.

Q And would the residues that Eagle Picher generated have contained nickel?

A I really can't answer that. I don't know.

Q Okay.

A I don't remember, let's put it that a-way.

Q And would the residues that Eagle Picher generated have contained zinc?

A Yes.

Q And how do you know that?

A From the assay of it. You couldn't -- actually, as far as the residue goes, you look at it, you couldn't

tell what was in it other than the carbon until you assayed it.

Q And just to backtrack, to make sure I have the record clear here. Did the residue piles that Eagle Picher generated, would they have contained lead?

A If there was lead in the -- in the product then the residue -- I would rather think that there wouldn't be much lead in the residue. Minor because lead would vaporize off into the oxide.

Q But would there be some lead in the residue?

A There possibly could be some lead in it.

Q Okay.

A To the extent of, say, in 1 percent or 5 percent or a half a percent, I can't answer you.

MR. KRUEGER: Okay. All right, would you mind takin' about a five minute break?

THE DEPONENT: It's up to you. Don't make any difference to me.

MR. KRUEGER: All right. I -- I think I need one.

(Laughter.)

MR. KRUEGER: We can go off the record for just a moment.

(A short recess was taken.)

MR. KRUEGER: All right. Mr. Moler, I'm gonna hand

you what I've marked as Government Exhibit 2.

(It should be noted that
Government Exhibit Number 2
was marked for identification
and furnished to the deponent
for review.)

MR. KRUEGER: And I'll give copies to Counsel as well.

(It should be noted that
copies of said exhibit were
furnished to Counsel.)

MR. IX: Thank you.

MR. BURKE: Thanks.

MR. KRUEGER: Do you recognize this document?

THE DEPONENT: It looks like an assay of the mixturing products.

Q And what use would be made of this sort of document?

A Well, we just assayed everything and kept track of -- kept it in a -- in a book or file card there at the plant.

Q And now --

A And you could take and -- oh, like, your number two slag you got listed here at the top, 1013. If we had

it out in the slag pile then we could look over here and say, oh, here's some that we got high zinc, 23 percent and 57 percent. You know, you could tell what was in it and which way to go.

Q And when you say which way to go --

A Whether you wanted to crush it, reclaim it and run it back through the furnace room.

Q And could you describe for me what the -- what the chemical constituents are that are written across the top line?

A Well, you got water and your zinc and your iron, your copper, your lead, cadmium, chlorine, sulfur, aluminum, insol, available zinc and then carbon.

Q And so this information describes the chemical constituents --

A Yeah, they're chemical constituents.

Q And are you familiar with how these records were made or would be made by Eagle Picher?

A Well, they would -- they would be taken to the lab and they would be assayed and they would be given to the chief chemist and he would record them and put them in a -- in a -- files. I'm guessin', just lookin' at this, this is the file card and they've laid two together and copied it.

Q And this information -- would this information have been recorded at the time the assay was conducted?
A Within a day or so.
Q All right.
A Some -- some of the stuff you -- you could -- you could run -- put it in chemicals and you couldn't run it all in the same day.
Q Okay.
A But within -- within probably 24 hours it was all assayed and taken care of.
Q And would Eagle Picher use and rely on this information?
A Well, yes, I'm sure they did.
Q And now -- I'm sorry if this is a little bit repetitive; but, if you could, could you describe for me the various positions you held with Eagle Picher at the plant?
A Well, let's see, I was -- I was just a laborer to begin with and then I worked -- went into the lab. And then from the lab I went into the main lab. When I say from one lab -- we had what we called shift lab which was down at the refinery building and then they had the main lab which was up at the office. And that's where -- your main lab, most of your incoming and finished products and

stuff was assayed up there.

Q And what would be done at the shift lab?

A They would -- actually, as the product was made through the refineries, which we haven't talked about, but it's -- they would assay it every so many hours. Like, some products you have it assayed every hour, some products you have it assayed every two hours. And we'd assay it, make sure we were in the gram weight and the color and, you know, make a decent product to sell.

Q And did you hold any other positions with Eagle Picher after you worked in the main lab?

A Yes. I went from there to bein' a shift foreman, and then I was -- (short pause) -- let's see, where did I go from the shift foreman -- (short pause) -- shift foreman, I was made furnace superintendent over the metal furnace. And from there I was -- they put me to the -- (short pause) -- after foreman to metal furnace, then I was over the rotary furnaces. And from rotary furnaces I was made superintendent down at refinery for a little bit. And then that's -- I think that's where I was at -- no, I was at the shop when I was maintenance superintendent for awhile. I just jumped from one job to the other.

Q And now you indicated that you for a period of

time with Eagle Picher were in charge of the metal furnace?

A Uh-huh.

Q And what would that entail?

A That would entail -- if we got assay back, what -- the lab would assay the material and then I could sit down and figure out what feed we wanted to put into the furnace to make what product.

Q And then when you were in charge of -- pardon me, the rotary furnaces, what did that job entail?

A Basically done the same thing.

Q And do you recall at what point Sherwin-Williams took ownership of the Hillsboro plant?

A '83, I believe. Maybe it was '80. I think they had it from '80 to '83.

Q Okay. I'm gonna show you a document that I've marked as Government Exhibit 3 --

(It should be noted that Government Exhibit Number 3 was marked for identification and furnished to the deponent for review.)

Q -- and I'm giving copies to both parties.

(It should be noted that copies of said exhibit were furnished to Counsel.)

Q I'd ask you, if you would, to take a look at this and see if that helps refresh your recollection on when Sherwin-Williams took control of the plant.

(Short pause while said exhibit was reviewed by the deponent.)

A I believe that's right.

Q Now I'm gonna take that one back from you.

A Go ahead.

Q And when -- you say you believe that's right. Does that help you recall when Sherwin-Williams took control --

A Yeah.

Q -- of the plant?

And -- and when would that have been?

A In the latter part of '80.

Q Okay. And now what was your position at the time that Sherwin-Williams took over the plant?

A I believe -- (short pause) -- I believe I was at the refinery supervisor.

Q And did your duties and responsibilities change

under Sherwin-Williams?

A Yes, they did.

Q And how did they change?

A They brought in their own higher management people.

Q But in terms of your duties at the plant, how did your -- how did your job responsibilities --

A Well --

Q -- change?

A Well, mine changed from bein' supervisor back down to sometime workin' in the lab, sometime workin' up on the -- supervisin' the -- the dock. I was downgraded.

Q And what -- do you recall what positions you held during the time Sherwin-Williams was at the plant?

A No. Basically, I was -- just minor jobs, you know, I worked in the lab a little bit, shift lab. I worked in -- down around the refinery quite a bit. Helped out in the maintenance some. But as far as basic supervisory, I wasn't anymore.

Q Okay. Were you involved in the operations of the furnaces for Sherwin-Williams?

A No.

Q Okay. And what was Sherwin-Williams' business at the site?

A (Short pause) --
Q What sort of business did they operate there?
A They continued to operate the same business that Eagle Picher did. Making zinc oxide.
Q And now did they continue to operate the same equipment that Eagle Picher did?
A Basically. To start with.
Q Okay. Did they operate the muffle furnace?
A Yes, they did.
Q Did they operate it in the same way that you described Eagle Picher's --
A Yes.
Q Okay. Did they operate the rotary furnaces?
A Yes, they did.
Q Did they operate the rotary furnaces in the same manner that you described for Eagle Picher?
A I believe so.
Q Did they operate the carbon recovery plant when Sherwin-Williams was present at the site?
A Yeah.
Q Okay. And did they operate that plant in the same manner that Eagle Picher had?
A Yes, they did.
Q Did Sherwin-Williams operate the Wetherill

furnace at the site?
A No.
Q Do you recall if Sherwin-Williams ran both muffle furnaces at the plant?
A I don't remember both of them runnin' at one time. They might have run one and then the other. So, we would run one and shut one down and work on it and run the other one.
Q Do you recall if Sherwin-Williams ran all four of the rotary furnaces at the plant?
A I don't believe they did. Block one, I know they didn't. Block four -- rotary furnace four, I don't think they run. They did run three and they did run two.
Q And do you recall what materials they ran in rotary furnace three?
A Offhand, no, not -- I can't tell you what type of material, I just don't remember.
Q Okay.
A I know we run it and, like I say, I was -- wasn't in the position to know what was bein' put through it and everything at that time.
Q Okay. Do you recall Sherwin-Williams doing any evaluation of the site before they bought it?
A No, I don't. I was not involved in none of

that.

Q Do you recall what the physical condition of the plant would have been at the time Sherwin-Williams acquired it?

A Better shape than it is now.

(Laughter.)

A No, I -- you know, it's -- it's hard to say, you know, 'cause as years go by things have to be replaced and whether they replaced them or Eagle replaced them or Ted replaced them, you know, as things deteriorated they was taken care of.

Q Now we've discussed a number of areas where by-products were stored and accumulated at the property.

A Uh-huh.

Q Do you recall if those accumulation areas would have all been active at the time Sherwin-Williams acquired the property?

A Yeah, they was -- well -- (short pause) -- yeah, they should have been all active 'cause if they was runnin' the metal furnaces the dross pile would have been there. We run the two rotaries, so the residue piles and the slag piles would be there.

Q And the material that you indicated down in the RR1-1 and RR-2 (sic) area down by the pond in the

southwest --

A Uh-huh.

Q -- corner of the property --

A Right here?

Q That would have been there at the time Sherwin-Williams acquired --

A Yes, there was -- already there.

Q So you indicated that Sherwin-Williams operated the muffle furnaces at the plant. Would the muffle furnaces have generated the same by-products --

A Yes.

Q -- that they did when Eagle Picher operated them?

A Yes, they would have.

Q Do you recall where Sherwin-Williams placed those by-products?

A It would be the same as Eagle's. We never changed things around.

Q So would Sherwin-Williams have added its material to the existing piles?

A If there was existing pile there they would have added to it.

Q And did Sherwin-Williams generate the same types of rotary furnace --

A Uh-huh.
Q -- by-products that Eagle Picher did?
A Yes, they did.
Q And could you repeat for me what those types of by-products would have been?
A The rotary residue and the slag.
Q Okay. And do you recall where Sherwin-Williams placed the slag by-products when it was at the plant?
A Well, basically, they would put some on top of where we already had the slag area. Where you're showin' as RCO-5.
Q And do you recall where Sherwin-Williams placed the rotary furnace residues from rotary number two?
A Rotary number two, some of theirs was placed where I showed rotary residue and some of it was placed -- oh, I don't know, say, where this RR1-4 is, right along that area.
Q Okay.
A We placed some down there when we run out of room out here.
Q And do you recall -- or, in Sherwin-Williams' operation of furnace number three, did it generate the same types of by-products as Eagle Picher did?
A Basically.

Q And do you recall where the residue from furnace number three would have been placed by Sherwin-Williams?

A Where I would show the number three residue from Eagle. They added to it.

Q So Sherwin-Williams added to the existing pile?

A (Nods head yes.)

We kept it separated from the regular rotary furnace.

Q When Sherwin-Williams operated the plant did it make use of material in the residue piles to reuse in plant operations?

A Yes, they did.

Q Did Sherwin-Williams move the material in the piles around in doing so?

A They had to.

Q And in doing so -- strike that.

You had indicated that when Eagle Picher operated the plant the residues that it would place in the accumulation areas wet would spread along with the moisture?

A Yes.

Q Was that the case when Sherwin-Williams was operating the plant?

A Yes, it would be no different.

Q During the time that Sherwin-Williams was there did you witness any material washing off of the piles or accumulation areas?

A Well, like I told you before, when you dump and it's wet it's gonna slide down, the water would run off to the sides and that. Some of it would go down underneath the pile. You -- you know, it basically would be wet for a long time, so whether it run off and soaked in or whether it soaked in underneath the pile, why --

Q During --

A Any -- any time you dump somethin' wet it's gonna slide and the more you put up the more it slides out.

Q During the time Sherwin-Williams operated the plant did you observe materials from the -- the piles washing off during rainstorms?

A No, I don't think they washed out during rainstorms. Water might run off of it; but, as far as the material, it would pretty well stay where it was at. You know, it might slide a little bit but not wash away into the creek or 15, 20 feet away. It just wouldn't do it.

Q But it would slide --

A Right.

Q -- to -- to a lesser distance --

A Right.
Q -- from the piles?
A Water would cause it to slide. But that's with all rotary residue, not just Sherwin's or Eagle's but it's all of it.
Q Now we had discussed the -- the chemical contents of the material that would be placed in the accumulation areas by Eagle Picher. Would the chemical constituents of those materials Sherwin-Williams accumulated have been any different?
A Shouldn't have been.
Q So would the material placed in the accumulation areas by Sherwin-Williams have contained lead?
A They would -- basically contained the same thing that the others had, you know. They had -- they'd have lead in it, probably a small amount. They would have zinc. They'd have iron. Possibly some copper in it. Depends on the type of nozzlers we was runnin'.
Q And again, how -- how do you know the contents of the material in those piles?
A Because they're assayed.
Q Do you recall at some point Sherwin-Williams beginning a -- an effort to clean up piles of material at the site?

A Well, at -- off and on there they would take and -- I know they sold a lot of the muffle dross and got it off the plant. So, yeah, there was times that they was cleanin' up and takin' care of things.

Q And are you aware of why Sherwin-Williams was cleaning up the piles of muffle dross?

A No, that -- that was upper management. I had nothin' to do with it.

Q All right. And do you recall Sherwin-Williams selling the plant operations?

A I remember when it was shut down.

Q Okay. And do you recall when Sherwin-Williams shut down the plant operations?

A First part of '83. I don't know whether it was February or March, somewhere in that area.

Q And do you know why Sherwin-Williams shut down -- shut down plant operations at that time?

A No. I can't give you an answer.

Q Did Sherwin-Williams ever reopen plant operations?

A No.

Q Did Sherwin-Williams at least sell the plant?

A They sold it, yes.

Q Do you recall when they sold it?

A I don't know whether it was the end of '83 or -- I think it was the end of '83. I'm not positive. It could have been at the first months of '84, but I think it was at the end of '83.

Q And were you employed by Eagle Zinc?

A Yes, I was.

MR. IX: Object and ask you to clarify the term -- using Eagle Zinc. What do you mean by that?

MR. KRUEGER: And your answer was?

THE DEPONENT: I -- you asked me if I was employed by Eagle Zinc; and, I said yes, I was.

Q And just to clarify, who -- who purchased the property in 1984?

A T.L. Diamond.

Q Could you clarify for me then -- you'd indicated that you were employed by Eagle Zinc. Is Eagle Zinc affiliated with T.L. Diamond?

A It -- it was -- it was a division of T.L. Diamond, Incorporated.

Q And what was the nature of T.L. Diamond's operations at the site?

A We basically made zinc oxide off the rotary furnace.

Q And T.L. Diamond used only the rotary furnace?

A Yeah, we -- well, we used the two rotary furnace. We run block three for a little -- off and on period.

Q And which other rotary furnace --

A Block two.

Q -- did you --

And could you describe for me the nature of your employment with T.L. Diamond?

A I was a little bit of everything. When we started up we was a small operation, and basically there was about -- a lab person and a production person and the office person. And I basically worked as far as gettin' -- worked with plant manager at that time getting a -- the plant up and running to making zinc oxide. And any maintenance was taken care of -- I was in charge of gettin' the maintenance and gettin' it repaired or whatever. It was a small operation to begin with. Ted had just a small place and gradually we was comin' up.

Q And now when you -- when you say Ted, who are you referring to?

A Mr. Diamond.

Q And who was the plant manager at that time that you were with -- working with?

A When I first started it was Lester Roman

(phonetic).

Q Had Mr. Roman also worked with Sherwin-Williams?

A Yes, he did.

Q In what capacity did he work at Sherwin-Williams?

A He was up in the main office, but I can't -- I don't know whether he was plant superintendent or what he was. I really can't tell you what he done.

Q And did the nature of T.L. Diamond's operation at the plant change over time?

A No. Basically, we made the same material and produced the same type oxide and what have you.

Q Did the size of its operation at the site expand over time?

A Not a great lot, no.

Q Do you recall what the physical condition of the plant was at the time that T.L. Diamond resumed operations?

A When he started?

Q Right.

A It was -- basically, it was in fair condition, just like it was when Sherwin bought it, you know, you can't say it was perfect or above average because it wasn't.

Q And do you recall whether the by-product materials were stored in the plant yard at the time T.L. Diamond resumed operations?

A Yes, I do.

Q Do you recall which residues were present at the time T.L. Diamond resumed operations?

A Well, all the residue along here, where I -- where I referred to as RR1-4, and the big residue pile which we classified as rotary residue. And this pile was here, but we didn't use it.

Q And by this pile, you're referring to --

A To the block three rotary residue.

We run three, but we did not put anything there. When I say we, T.L. Diamond & Company did not put anything there. Because we had changed the operation, how we done stuff at that time.

Q You had changed the operation of -- of furnace number three?

A Well, we changed how we handled the by-product off of it.

Q And how did you handle the by-product from furnace three?

A When the by-product come off the furnace it was stored right beside the rotary furnaces one, three and

four along the brick wall. And --

Q And you're indicating in the area to the east of the road?

A It would be east of the road and --

Q And west of the building?

A -- west of the building.

We take it out when it was warm and store it there. Then we would take it from that point down to the muffle furnace slab where we would screen it, and take it back up to the mix room to be mixed back in with the charge.

Q So does that -- does that mean that the material -- the by-products from rotary furnace three were reused by T.L. Diamond?

A Yes.

Q Just -- just to clarify then; your recollection as I understand it is -- which piles would have been present at the site when T.L. Diamond acquired it?

A Your slag piles. Your rotary residue piles. Your --

Q So that -- that's just --

A Which would have been down by RR1-4, right beside CPH-8 and 6. The RR2-11. The -- the dross piles was not there. Maybe some little small parts that wasn't

cleaned up, but basically they was -- was not there. There was a few small piles there, but no big piles. But they was there when Ted got the place, when -- Mr. Diamond.

Q And would the material in the southwest corner in the area marked as RR1-1 and RR1-2 have been present at the site when T.L. Diamond --

A Yes --

Q -- took over?

A -- they was.

Q (Short pause) --

THE DEPONENT: (Indicating to Mr. Ix) -- this here rotary residue, I marked it on my sheet. I don't know if you got it or not. Did they get that? The rotary residue that was -- that was by RR1-4?

MR. BURKE: By RR1-4?

THE DEPONENT: Right in this area.

MR. KRUEGER: And just to clarify that, Mr. Moler, I appreciate you labeling that area as well and clarifying the labeling --

THE DEPONENT: Well --

MR. KRUEGER: -- that we're -- as well.

THE DEPONENT: Well, we talked about it but I didn't label it at the time and I thought I better label because

I labeled everything else.

Q Who would have produced the rotary residue material that was accumulated in that area?

A This area here would have been under Sherwin-Williams because this pile was gettin' so big and we had loads in front of it that we started puttin' some down here.

Q So you're indicating the original rotary residue pile to the north of the RR1-4 area is the area -- is the pile that came too large?

A This one here.

Q To -- and that -- and that's to the north of RR1-4?

A Right, to the north of it.

Q All right.

A At that time we had a lot there and we hadn't processed it so we went ahead and started puttin' some truckloads down through here.

Q Do you recall if T.L. Diamond ran the carbon recovery operation?

A For a short period, but then we changed how we recovered the carbon.

Q And --

A We found it wasn't near as profitable to run it

through the carbon recovery plant as it was to take it and run it through a trommel screen like we used to do the muffle dross, only we put a finer screen inside of it and screened it, and it -- it done the same thing. It didn't get out all the impurities, but then it -- it worked a lot better and we was able to reuse the carbon that a-way.

Q Now was carbon hutch still generated as a result of that --

A No.

Q -- product?

A No.

Q Okay. Was carbon hutch generated during the time that Eagle Picher did operate the carbon recovery plant?

A Yes, it was.

Q And do you recall -- I think I misspoke.

While T.L. Diamond ran the carbon recovery plant?

A When we -- at first when we run the carbon recovery plant, the plant itself, yeah, there was hutch accumulated there.

Q And do you recall where T.L. Diamond would have placed the carbon hutch it generated at the plant?

A (Short pause) -- well, it would be in this area

over here, where the CR -- CPH-8 is. We dumped ours right in front of what was already there.

MR. McCONNELL: Tom, can we go off the record?

(An off the record discussion was held.)

MR. KRUEGER: All right, back on the record then. We would like to clarify one matter for the record; and, Mr. Moler, would you like to explain what we discussed and what you've clarified on your map?

THE DEPONENT: All these?

Q No, just the -- the labeling correction that we discussed while we were off the record.

A Oh, you talkin' about this one, the rotary residue?

Q You -- you had been making references to CPH-8 --

A Oh, I changed --

Q -- on the exhibit, on the map --

A They said it was a nine, and I got to lookin' -- mine still looked like an eight, but I erased the eight or that I say was an eight and put a nine right below it.

Q So -- so the references in the record so far to CPH-8 --

A Would be actually a nine.

Q All right. Thank you.

All right, just to make sure I've got this all straight now. When -- when T.L. Diamond took over operations at the Hillsboro plant did it run the muffle furnace?

A I don't remember it ever runnin' the muffle furnace.

Q Okay. It -- it would -- it did run the rotary furnaces?

A Yes, we did. Two of them.

Q And those are units --

A Three and one -- three and two.

Q And it did run the carbon recovery plant?

A For a little while.

Q Now would the by-products generated by the rotary furnaces during T.L. Diamond's operation have been similar to the by-products generated by Sherwin-Williams and Eagle Picher?

A Yes.

Q And would that be true with respect to furnace number three as well?

A Well, like I told you, we kept ours separated because we used it -- we run different materials through there that -- and we took the by-products down and

screened them and assayed them and then run them back through the furnace. Actually, you was buyin' products -- secondary products and you run them through there and seein' what kind of -- of a product you come up with and we'd run that back through the furnace and we knew exactly what we was doin'. I hope.

Q And now did T.L. Diamond also attempt to -- to reuse portions of the material in the accumulation areas --

A Yes, they did.

Q -- out in the plant yard?

A Yes, they did.

Q And in doing so, did -- did they spread the piles around?

A Well, I wouldn't say they spread them around. Because we would take and pick them up and take them -- like, the rotary residue piles here, we would take them and -- and screen them and put them down here in the area of RRO-12 and NP-15. In between them. Which we took them piles and that was into a product we was selling.

Q And physically taking the material out of the piles, would they mix the piles around?

A No, we -- we -- normally, we'd -- like, we work from one pile and, like, this big pile here, we tried to

get it completely gone which we did, you know, basically down to the level. There was still some left there but, you know, like, a load. But then from there we went down -- we was workin' on this rotary residue pile down here which would be close to RR1-4.

Q Okay. In taking material out of the piles or the accumulation areas, would T.L. Diamond have mixed the material around inside the individual pile --

A No.

Q -- in doing so?

A No. Now the -- when they screened it, if you had some of the big pile and then you got into some of the little pile, one would be on top of the other out here. But as far as, you know, just pushin' them together and mixin' them up, no, we didn't do that.

Q But if -- if I understood, and -- and I don't want to mischaracterize what you just said, but I do -- I want to understand it --

A Well --

Q -- it --

A -- I'm sayin', if we took this dross here out of the big pile --

Q You're indicating the rotary residue pile?

A The rotary residue pile.

And screened it and put it out here for the -- to be sold, and then you took and screened some of this and brought it out here to be sold, if this wasn't all gone then you'd dump what we screened from this pile on top of this.

Q Okay. But you're describing mixing of screened materials that were pulled from the larger accumulation piles so that they could be resold?

A Right.

MR. IX: Object to the form.

MR. KRUEGER: And now you've just -- you just indicated that a large rotary residue pile was removed by T.L. Diamond?

THE DEPONENT: Right. This pile here.

Q All right, and you're indicating the pile that's located to the south of the carbon plant building?

A Right.

Q Could I ask you to make a notation on there, maybe just off to the side, indicating you recall that was removed by T.L. Diamond?

(Which was so done.)

MR. BURKE: Can you show us that pile? Would you hold it so we can see it?

THE DEPONENT: This pile here, and this pile here.

MR. BURKE: Thank you.
THE DEPONENT: We cleaned this pile up and worked on this pile here.
MR. IX: The second one you're referencing is RR1-4?
THE DEPONENT: Uh-huh.
MR. KRUEGER: And now we had discussed previously with respect to the operations of Eagle Picher and Sherwin-Williams that in handling materials in the pile the materials would be spread around and moved around. Was that true of the materials handling while T.L. Diamond owned the property as well?
MR. BURKE: Object to the form.
THE DEPONENT: What -- what are you referring to? Like I told you, we took this pile and screened it and moved it to here, and part of this pile and screened it and moved it to here.
MR. KRUEGER: I think before -- before we were talking about just purely the physical handling of the material in the piles when it was being pulled up to be assayed so it could be reused. And -- and I believe -- again, I don't want to mischaracterize what you said, but I believe you said in doing so material in the piles would be moved around.
A Well, yeah, they, you know, you run in with a

payloader and pick somethin' up and then you get a bucket full and it spreads out to the side when you raise it up and that; and, so, yeah, it moves.

Q And that was true when T.L. Diamond was taking material from the accumulation area --

A Right.

Q -- as well?

I think the last thing I've got that I want to show you -- and I'm gonna mark this as Government Exhibit 4.

(Government Exhibit Number 4 was marked for identification.)

MR. KRUEGER: And I apologize to Counsel, I -- I'm handing you copies of the exhibit but they're incomplete copies. They're -- they're intended to be the pages that I'm gonna ask Mr. Moler to look at; but, we have restrictions on the amount of color copying we can do, so I -- I gave you only the relevant pages.

MR. BURKE: I'll remember that on April 15.

(Laughter.)

MR. KRUEGER: But -- but I will --

(Laughter.)

MR. KRUEGER: But I'll also represent as a means of

excuse or justification that these come from a document that -- that was generated by Sherwin-Williams, T.L. Diamond and Eagle Picher.

(It should be noted that copies of said exhibit were furnished to Counsel.)

MR. KRUEGER: So I'm showing you what's marked as Government Exhibit 4.

(It should be noted that said exhibit was furnished to the deponent for review.)

MR. KRUEGER: And if I could direct your attention to photograph number one.

THE DEPONENT: Uh-huh.

Q Do you recognize what that material is?

A Well, it looks like the big pile of rotary residue that was -- where I said was right east of CPH-6 and 9. That's what it looks like.

Q It looks like that sort of material?

A Uh-huh.

Q The --

A Whether it is or not, I can't answer you, but --

Q And directing your attention to photograph number two. Do you -- do you recognize what sort of

material that is?

A Just looks like some oversize out of the rotary residue, is what it looks like.

Q And then directing your attention to what -- the next page, which is marked as Page Number 6 --

A Uh-huh.

Q -- Photograph 11. Do you recognize what that material is?

A Looks like some hutch.

Q And why do you say that?

A Well, it just -- that's what it looks like to me, is some hutch.

Q And -- and what about the material makes you believe it's -- it's hutch?

A This here? Or this?

Q Well, you --

A This -- this looks like hutch. This -- this here could be some rotary residue here, it's grayer.

Q And you're pointing to a material in Photograph Number 11?

A Photograph 11. And where I'm sittin', it would be the south and east corner of the photograph.

Q So, just to -- to make sure we've got the record clear here; you're -- you're indicating material in the

foreground of the photograph that's grayer in color --
A Right.
Q -- looks like it might be what kind of material?
A Looks like rotary residue.
Q Okay. And then you indicated the darker material --
A Looks like --
Q -- in the background --
A -- hutch. Looks like hutch to me.
Q And then directing your attention to Photograph 12. Do you recognize that sort of material?
A Well, it -- it could be part of the hutch material that's -- like I said, it -- it gets chunky and everything. It's like concrete when it sets up. 'Cause it's got so much iron in it.
Q Okay. And then directing your attention to the next page of photographs which is marked as Page 8, Photograph 15 at the top of the page. Do you recognize that sort of material?
A It -- still looks more -- more like some hutch layin' there.
Q And Photograph 16 on the bottom of Page 8?
A That's hutch.
Q And why do you say that?

A I -- 'cause I just know it is, that's why.
Q And that's from your experience at the plant?
A That's -- that's my experience, and that's -- you see where we tried to -- even had a backhoe in there tryin' to break it down and it just set up somethin' fierce.
Q (Short pause) --
A Sittin' here and hardened over the years.
Q And then directing your attention to Page 11, the Photograph 22 at the bottom of the page. Do you recognize that material?
A I don't know, that -- (short pause) -- that could -- it could be some hutch but it also looks like there's some muffle dross there involved in it and some chunks. But I -- I -- I don't see why it would be. But I don't know where -- where it come from, so -- see, your gray -- gray color is -- it looks like muffle dross sometime, your darker color looks like hutch. It don't -- it don't look like the rotary residue, but then some of the big chunks look like some slag chunks.
Q From the furnace cleanout?
A Uh-huh.
Q And then I -- if you would turn to the next page which is marked as Page 18. Do you recognize the material

shown on Photograph 35 at the top of the page?
A No, I don't. I don't know what it is.
Q Photograph 36 at the bottom of that page?
A Still can't answer you, 'cause I don't -- without bein' out there and physically seein' the pile and lookin' at it I can't -- I can't give you a good answer.
MR. KRUEGER: Okay. That's all I have.
THE DEPONENT: That's all you have. I hope I've answered your questions satisfactory to everybody.
MR. KRUEGER: Okay. And now I -- I would suggest that we might want to take a short break and then we can determine if the other counsel here wish to cross examine you and which order they'd like to go in.
THE DEPONENT: Fine with me.
(A short recess was taken.)
MR. BURKE: I'm gonna go next, if it's okay.
MR. KRUEGER: Lucky you.
MR. BURKE: Everybody ready to go? Ready to go back on the record?
Mr. Moler, my name is Kim Burke. I represent the Sherwin-Williams Company --
THE DEPONENT: Uh-huh.
MR. BURKE: -- and I have some follow-up questions for you.

EXAMINATION

BY MR. BURKE:

Q First, going back to the entire period of time that you worked there. You mentioned that products from time to time were taken out of the furnaces and placed in piles around the property. I take it, those piles were placed around the property because the material in the piles was viewed as having potential use for reuse in the furnaces, correct?

A (Nods head yes.)

Q Is that a yes?

A Yes.

Q Okay. So you considered all of that material to be a useful product, didn't you?

A No, I don't consider all of it to be a useful product as far as the operation of the plant goes. Because if you get into some of this slag that we have and it's low zinc, low-grade, you can't -- there's no need to crush it and put it back through the furnace.

Q All right.

A There's nothin' there to reclaim.

Q Could that material also have been sold though?

A I can't answer you that, I don't know.

Q All right. So there might have been some value

even in the slag, right?

A There could have been, but I can't answer that. I don't know.

Q You'd mentioned my -- I think that there had been -- when Sherwin-Williams took over ownership of the property that Sherwin-Williams had removed some piles of material from the property, correct?

A Some muffle dross, yes.

Q Okay. And can you identify on Exhibit 1 which of those piles Sherwin-Williams removed from the property when it operated there?

A Well, you can't show them 'cause they're not there.

Q Because they're not there. All right.

A I mean, like, this NP-15 and 12 and right around that area -- NP-13, that could have muffle dross on the ground in small piles of it because it wasn't completely all sold off or shipped out or whatever happened to it. But there's -- there's still some -- probably there's still some out there right now.

Q All right. Do you know that for a fact or are you guessing?

A No, I know that for a fact.

Q All right. But when Sherwin-Williams operated

at -- at the plant they had certain piles of muffle dross that they sold off, is that right?

A That's what I understand.

Q Okay, when you say you understand it, is that because you observed it because you worked there?

A I -- I'm sayin' because when I was there Sherwin-Williams removed the material from the plant. I seen it was there, now it was gone.

Q Oh, I see.

Can you give me an estimate of how much material was removed from the plant by Sherwin-Williams?

A God, I don't know. It could be anywheres from five to ten thousand pounds, I just don't know.

Q Okay.

A Or tons, not pounds.

Q Tons, uh-huh.

And did Sherwin-Williams during the time that you worked there remove anything from those piles other than muffle -- muffle dross?

A As far as shippin' it out and that?

Q Yes.

A Not that I know of.

Q Okay. And -- now did Sherwin-Williams reuse material from other piles on the property during the time

that Sherwin-Williams operated at the plant?

A Oh, yeah. When we run carbon they would reuse some of the carbon, the carbon itself which was anthracite coal, basically, yeah.

Q And that's because it was a useful product?

A Right.

Q And they reused other material that had high zinc content because that was a useful product, right?

A Right.

Q When you mentioned before that front endloaders would be used to scoop into these piles and material would be moved, are you just referring to material collapsing around the bucket itself inside the pile?

A Well, no, because you pick a pile up and you got a big bucket full and you back up and some of it runs off and you pull over towards the truck and --

Q Uh-huh.

A -- some more of it runs off and then when you -- when you get done, you're all done with that, then you try to push it back up to the pile but you don't get it all back up there. So some of it spreads out a little bit.

Q But -- but there was an effort made to push the material back into the pile if it -- if it fell out of the bucket?

A Oh, yeah. We always done that to try to keep it all in one place so when you would next come in there then you would go into the pile and try to get it cleaned up. You don't want to spread it out all over and leave a pile here and a pile here and a pile there.

Q It's a -- kind of like a dustpan, isn't it?

A Yeah, basically.

Q And the reason you wanted to keep it all in one --

MR. KRUEGER: I object to the characterization.

MR. BURKE: The reason you want to keep it all in one place, because it was a useful material?

THE DEPONENT: That's right. Or at least we thought so.

Q Right. You believed it to be --

A Until -- until we assayed it or whatever we -- because, like I said, you collect it off the furnace every day and you assay it and then they take a truckload away that -- or two truckloads away, then that guy gets a sample and you assay it. And, you know, it's -- then you take it over to the pile and then if it's all in one pile then a lot of times if we went in there to -- if we wanted to run it back through the furnace then we would screen it and then we'd assay it again.

Q And assays vary from sample to sample, wouldn't they?
A Sure they would.
Q And there would be a considerable various from the assay --
A Yeah, you got moisture and everything else to contend to.
Q Let me direct your attention back to the Exhibit Number 2 which I think is an assay sheet. Do you have that one handy?
A I probably got it here somewhere.
Q (Short pause) -- do you have Exhibit 2 in front of you?
A (Nods head yes.)
Q Is that -- do you have Exhibit 2 in front of you?
A I guess that's what it says, yeah.
Q Says Exhibit 2 on the bottom?
A Yes.
Q I'm a little bit far from you, that's why I'm asking you.
Is that your handwriting on that document?
A Is that my handwriting? No.
Q Who prepared it?

A Well, I can't say whether Max Page (phonetic) done it or -- (short pause) -- we had two or three chief chemists out there. I can't answer you. The name Les here is the one that -- he was the -- probably the furnace superintendent at this time and he probably put his name on there, he made the copy or what -- I can't answer you.

Q Can you positively identify the handwriting on Exhibit Number 2?

A No, I can't.

Q Were you directing the preparation of the assays that were done in Exhibit Number 2 at the time that they were done?

A I doubt it.

Q Okay. Is that because you weren't working in the lab at that time?

A I wasn't working in the lab at that time.

Q So --

A But I don't know -- well -- (short pause) -- this is '80 and '79. No, I wasn't workin' in the lab.

Q Okay. So who -- who -- who would have been in charge of the lab at the time that Exhibit 2 was prepared?

A Max Page.

Q Max Page, okay.

A I would think that's who it was.

Q And where is Max Page today?
A I -- (short pause) -- I don't know whether he's even alive or not. He was in a nursing home and he had Alzheimer's disease and he got to where he didn't know nobody or nothin' and -- he was in a nursing home, and I don't really know if he's alive or not. I really can't answer you.
Q I'm gonna ask you specifically about the time when you were working at the plant when Sherwin-Williams owned and operated that particular plant; all right? During the time that you were working there when Sherwin-Williams owned and operated that plant did you ever see any releases of any of the material that was a waste from the plant go into the environment?
A Well, I -- I think you see a little bit of it go in the environment from everybody runnin' the place. If you're talkin' smoke out of the stack or -- I don't care what you do, it's not perfect.
Q Did you ever see during the time that Sherwin-Williams was operating the plant any discoloration of streams around there?
A I -- I'm gonna answer you truthfully. I never went and checked the waters on any time anybody run the plant.

Q So you never saw any releases of material coming off of the piles that were at the plant into surface water from the plant, did you?

A Well, I've seen it where the water come off the piles that -- the residue piles and that and flow out to the side of it. But as far as whether it flowed ten feet or five feet, I can't answer you -- or, 20, 25 feet, I can't answer you.

Q And as for the water that was coming off of those piles, you didn't know whether there were any chemicals in them, do you?

A I wouldn't know unless they was assayed.

Q And to your knowledge were any assays ever done?

A I don't think that we did.

Q Do you know if anybody else did?

A Not 'til after -- not 'til, as far as I know, until EPA come in.

Q When did EPA come in?

A I can't answer that because I don't know the exact time it was.

Q Was it -- was it during Sherwin-Williams' ownership of the plant?

A I don't know. I do know that they was there during parts of Ted's, but I can't answer you whether --

'cause that could have been up there -- the main office, and I wouldn't know anything about it.

Q When you refer to Ted, are you referring to --

A Mr. Diamond.

Q Okay. Now you've mentioned his name a few times. Was he present on the plant on several occasions?

A Different times, yes, sir.

Q Why was he there?

MR. IX: Object to the -- object, I think it's outside the scope of this deposition.

MR. BURKE: Okay, why was he there?

You can answer.

MR. IX: Same objection.

THE DEPONENT: Well, Ted just come down to visit and see how things was doin'.

MR. BURKE: And did he provide any input into how the plant should be run?

MR. IX: I object to this line of questioning.

Tom, what do you think? I think this is outside the scope of this deposition based on the application that you made for the deposition. You haven't made an application.

MR. BURKE: You can go ahead and answer the question.

MR. IX: Not necessarily.

Tom, what do you think?

MR. KRUEGER: My -- I don't object to it going on for a little while. I -- I hope this isn't gonna turn into an elaborate discussion of the issue; but, we're -- we're gettin' at the outer edges of the scope of our petition. But it is a petition to perpetuate testimony.

THE DEPONENT: Okay.

MR. IX: Perpetuate testimony with respect to your potential claim against two parties, Sherwin-Williams and T.L. Diamond & Company.

MR. KRUEGER: Well -- and again, I think some of these initial questions go -- are -- are within the scope of that inquiry. I -- and I'm willing at this point to not object and see where this is going.

MR. IX: I object.

And I can't instruct you not to answer; but, it is my impression that you are under no obligation to answer these questions.

THE DEPONENT: Well, the question again?

MR. BURKE: Could you read that back, if you can find it?

(Said question was read back by the reporter.)

THE DEPONENT: I'm gonna answer that to your reasons

here.

When Ted come down -- Mr. Diamond come down, there was meetings in the main office and I was not involved in them. So I can't give you a more answer than that.

MR. BURKE: Okay, now during the examination by Mr. Krueger, he asked you about the changes in the operations that occurred between Sherwin-Williams and T.L. Diamond. Are you aware of any changes in operations that occurred when T.L. Diamond owned and operated that plant which was the result of any direction or guidance from Mr. Diamond?

MR. IX: Same objection.

THE DEPONENT: I can't answer you. I don't know.

MR. BURKE: You just don't know?

A Just don't know.

Q Okay.

A Anything -- anything that I know I'll answer to the best I can; but, if I don't know, I'll tell you I don't know.

Q In your prior testimony you had mentioned that when Sherwin-Williams owned and operated the plant the plant was shut down in 1983, is that correct?

A As far as I can remember, yes.

Q Do you remember when the employees were laid

off?
A I think it was -- they was given, like, 30 days or somethin', but -- and --
Q In -- in what year?
A In '83.
Q Okay. If I told you it was 1982, would you challenge that?
A No, because I -- I -- as far as I remember, I think it was '83.
Q Okay. But if I -- if a witness were to say that the layoff occurred in 1982, would you say that person is wrong?
MR. KRUEGER: Objection, calls for speculation.
MR. BURKE: Go ahead, you can answer.
THE DEPONENT: I -- I would -- personally, I would think they was wrong because I think it was '83.
Q Okay. What part of '83?
A Oh, I think it was -- (short pause) -- I don't -- close to the middle, eighty -- I don't remember, I just know it was in '83. And because that would be it, it was closer to the first part of '83.
Q Okay.
A Because I -- I was there 'til -- one of the last ones, and then the last two were there was Mr. Roman and

the office girl and they was takin' care of some business for Sherwin-Williams.

Q Maybe I should clarify my question.

When were the laborers laid off?

A Approximately 30 days after we was notified they was shuttin' the plant down.

Q And when was that?

A In the middle -- very, very first part of '83. I can't give you a month, I don't -- February or March or what it was. I really don't remember.

Q But you do remember it being in 1983?

A (Short pause) --

Q Correct?

A As far as I remember it was in '83.

Q Do you consider yourself to have a pretty good memory about what happened at the plant?

A I feel I've got a good memory. But then, you know, I'm 70 years old.

Q Well, if -- if you were wrong about the date of the layoff, for example, do you think that your other answers are as equally reliable?

A I think --

MR. KRUEGER: I'm gonna object to the form of the question.

THE DEPONENT: I -- I -- I think my answers are as truthful as I can be with you.

MR. BURKE: Yeah, I'm really going to your memory though and how accurate do you think your memory is.

A I think it's pretty good. But you're askin' me to come down to exact day or hour, I can't do it in exact day or hour but I can come close. Which was what I'm tellin' you, it's the first part of '83. Now I could be completely wrong, but I don't think so.

Q Do you recall any differences in the feedstock used by Sherwin-Williams when it operated the plant from the prior operations by Eagle Picher?

A Yes, I do.

Q Okay, what were the changes?

A Well, we used nodular ore to begin with at Eagle Picher time. And then during Sherwin-Williams' time we switched over and was usin' what we call --

(Reporter requested clarification.)

A Some Decca ore -- D-e-c-c-a, ore and that was brought in from overseas.

Q Okay. Do you also recall Sherwin-Williams using slab zinc?

A I -- sit here and say yes, I remember them

puttin' it in the furnace, I can't; but, I know there was some there and -- and it was gone. So I'm -- I'm guessin' that we put it right through the furnace.

Q I want to go back to your last answer.

Do you recall whether Eagle Picher ever used slab zinc?

A Yes, they did.

Q They did?

A I know for a fact.

Q In which furnace?

A In which furnace?

Q Uh-huh.

A Probably block five, block six and I imagine in block seven at one time.

Q You say probably, is that because you're not quite sure?

A No, it -- it's the fact, we've run water the other -- and the other. Sometimes maybe we -- on seven, maybe we just run scrap all the time or -- and maybe over on five we run scrap, maybe six we'd run scrap and then switch over to five and put the slabs through it. It's -- just depends on what we was doin', if we was makin' -- runnin' two furnaces, we was makin' two different types oxides.

Q Did Sherwin-Williams run more slab zinc through as a feedstock than Eagle Picher?

A I can't answer that. I don't know. You're talkin' -- they had it for two or three years and Eagle had it for a long time. The problem is it's hard to say who run what through as far as amounts.

Q Did you ever observe any spills of chemicals while Sherwin-Williams was operating the plant?

A Spills of chemicals -- now what are you referring to?

Q Do you know what a chemical is?

A Yeah, I know what a lot of chemicals are.

Q Okay. Did you ever observe any spills of chemicals?

A (Short pause) -- well, we don't have chemicals out at the plant other than what we assay with; and, no, they wasn't spilled. They was put down the drain, washed down the drain -- diluted.

(Short pause while certain notes were reviewed by Mr. Burke.)

(An off the record discussion was held between Mr. Burke and Mr. McDonnell.)

MR. BURKE: I have no further questions of the witness.

MR. IX: Okay. I just have a few questions for you.

I introduced myself earlier -- I'm John Ix, I represent T.L. Diamond & Company.

EXAMINATION

BY MR. IX:

Q I'd like you to look at Government Exhibit Number 1, please, which is the map.

A Uh-huh.

Q Do you see near the bottom of the -- it's outlined as the plant, there's a reference to RR1-3 and it's -- it's pink?

A Uh-huh.

Q You see that, sir?

A (Nods head yes.)

Q Do you recall a residue pile in that general location at any time?

A Well, it could be -- without actually goin' back out there and lookin' around, I can't even tell you if it was a residue pile or whether it was where the dam used to be for the pond or -- or what.

Q All right. How about -- there's a reference at the bottom also to MP1-21. Do you see that?

A Uh-huh.
Q Do you recall a residue pile or a pile of by-products any -- you know, in that general location at any time?
A Yeah, there was. In fact, there -- probably still there.
Q Do you know what type of material was there?
A Well, I imagine it was -- it was either slag from the furnace or -- well, pert-near had to be about that, all this other pile been layin' there for 20, 30 years or 40 years.
Q So slag from the furnace, is that the same as -- as the material that you previously indicated --
A Right.
Q -- was the slag from the rotary --
A Right.
Q -- which was in the area of RCO-5?
A See, all you're tellin' me, there's a pile there and I don't know what it is --
Q Uh-huh.
A -- without physically lookin' at it.
Q All right. Based on your recollection, is it possible that what's been indicated on this map as MP1-21 was actually an extension of the slag pile that you had

identified in your RCO-5?
A Very well could be.
Q All right. Near the middle of the plant site there's a reference to RCO-10. Do you see that?
A Uh-huh.
Q Do you have a recollection of a pile of -- of by-product or material in that general location?
A I think that's probably some hutch.
Q Okay. And do you recall whether hutch was placed in that general location during the period of time when this plant was operated by Eagle Picher?
A Well, it could have been there at the time of all three because you put it there and nobody moved --
(Reporter requested clarification.)
A It would be moved over to the big pile.
MR. IX: All right, I have nothing further.
MR. KRUEGER: Nor do I.
MR. BURKE: Okay.
THE DEPONENT: Me neither.
(Laughter.)
MR. BURKE: Thank you for your time.
MR. IX: Thanks very much for your time.
MR. KRUEGER: Mr. -- Mr. Moler, the court reporter

will send you a -- a copy of the transcript of your deposition and she'll ask you to review it and sign it and send you instructions on what to do with it. If you have any questions about it, I know she's given you her contact information.

And we very much appreciate your taking your time to come in today.

THE DEPONENT: Okay.

FURTHER DEPONENT SAITH NOT

Petition to Perpetuate Testimony - Case No. 1:07MC61
October 30, 2007 Deposition L. Moler (Krueger, Burke, Ix)

STATE OF ILLINOIS)
) SS.
COUNTY OF)

I, LUTHER MOLER, deponent herein, do hereby certify that I have read the foregoing deposition and that it is a true and accurate translation of the questions asked of me and the answers given by me, with the following change(s):

PAGE _____, LINE _____

CHANGE DESIRED _____

_____

REASON FOR CHANGE _____

PAGE _____, LINE _____

CHANGE DESIRED _____

_____

REASON FOR CHANGE _____

PAGE _____, LINE _____

CHANGE DESIRED _____

_____

REASON FOR CHANGE _____

_____
DEPONENT

Subscribed and sworn to before me
this day of
A.D., 2007.

_____
Notary Public

ERRATA SHEET

(Submitted for signature)

STATE OF ILLINOIS)
) SS.
COUNTY OF MENARD)

I, CONNIE S. GOLEMBECK, a Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for said County and State, do hereby certify that the Deponent herein, LUTHER MOLER, prior to the taking of the foregoing deposition, and on October 30, 2007, was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the cause aforesaid; that the said deposition was taken down by me by stenographic means and afterwards transcribed, and that the attached transcript contains a true and accurate translation of my shorthand notes referred to.

Given under my hand and seal this 16th day of November, A.D., 2007.

_____
Certified Shorthand Reporter,
Registered Professional
Reporter and Notary Public
(CSR Number 84-001782)

My commission expires:

May 29, 2011.